STANDARD CHARTERED BANK, SINGAPORE v. FOOK CHOY AUDIO SDN. BHD.

[A.C.J. (Mohamed Dzaiddin J.) December 14, 1987]

[Penang — Suit No. 24-174-86]

Negotiable Instruments — Bill of exchange — Dishonoured — Sum owed — Claim by summary judgment — Whether there are triable issues — Bills of Exchange Act 1949, ss. 19(1) & 72(d).

The plaintiff claimed a certain sum owed on a dishonoured bill of exchange dated January 17, 1985 together with interest and incidental charges. The plaintiff claimed as holder for value against the defendant as acceptor of the bill of exchange for S$45,750 drawn by Peter Loo Company Pte. Ltd., a company incorporated in Singapore, on the defendant and payable to the order of the plaintiff within a period of 120 days after sight.

When the bill was presented for payment, it was dishonoured. The plaintiff duly protested for non-payment. Subsequently, the defendant made part payment of the sum due. The plaintiff applied for summary judgment for the balance due and the learned Registrar entered final judgment for the balance of the sum.

The defendant appealed against the learned Registrar's decision. Counsel for the defendant raised three issues relating to capacity to sue, equitable defence of set-off and rate of exchange.

Held, dismissing the appeal: no triable issues were present and the defence had no merits.

Case referred to:

(1) *Barclays Bank Ltd.* v. *Aschaffenburger Zellstoffwerke A.G.* [1967] 1 Lloyd's Rep. 387.

APPEAL FROM REGISTRAR'S DECISION.

Neoh Lay Choo (Miss) for the appellant.
Karin Lim Ai Ching (Miss) for the respondent.

Cur. Adv. Vult.

Mohamed Dzaiddin J.: This is an appeal against the decision of the learned Registrar who gave final judgment to the plaintiff on July 2, 1987 for the sum of M$32,733.79 with interest at 8% per annum from date of judgment until full realization and costs.

The plaintiff's claim against the defendant is for money owed on the dishonoured bill of exchange dated January 17, 1985 together with interest and incidental charges. The plaintiff claims as holder for value against the defendant as acceptor of the said bill of exchange for S$45,750.00 drawn by Peter Loo Company Pte. Ltd., a company incorporated in Singapore, on the defendant and payable to the order of the Chartered Bank within a period of 120 days after sight which said bill was accepted. However, when it became due, it was presented for payment on April 15, 1985 but was dishonoured. The plaintiff duly protested for non-payment. Subsequently, the defendant promised to make full payment which was partly paid leaving a balance which at the date of the signing of final judgment was $32,733.79. On an application under Order 14 of the Rules of the High Court, the learned Registrar entered final judgment against the defendant.

Miss Neoh, for the defendant, raised three grounds of appeal, namely, on capacity to sue; equitable defence of set-off; and wrong calculation of exchange rate. Firstly, she submitted that "the holder for value" of the said bill of exchange is the Chartered Bank and not the plaintiff. It is quite clear that the plaintiff in this suit is the Standard Chartered Bank, Singapore and that at the time the contract was made the Bank was known as the Chartered Bank. According to counsel, they are separate legal entities. Hence, it raises a triable issue. I think it is a well-known fact and common knowledge that the Chartered Bank is now known as the Standard Chartered Bank all over the world. This is a fact which this court can take judicial notice of. There cannot be any doubt in one's mind that the defendant was not misled at all by the plaintiff as to their legal status. In the circumstances, I find there is no merit on this ground.

Secondly, Miss Neoh submitted that the defence has raised an equitable defence of set-off as per paragraph 7. This paragraph reads as follows:

> "7. As to paragraph 4 of the statement of claim the defendants aver that the payments were made on the understanding the defendants would be entitled to set the balance of the bill against the commissions and service allowance payable by the drawer."

In my opinion, the above defence was raised to fit in with the English Court of Appeal decision in *Barclays Bank Ltd.* v. *Aschaffenburger Zellstoffwerke A.G.*[1] An English company supplied the defendants, a Germany company, with machinery. Payment was by 18 bills of exchange drawn on the German company which accepted them. Barclays Bank agreed to finance the transaction, and bought the bills, paying 73 per cent of their face value and agreeing that when the bills were met at maturity the balance of 27 per cent would also be paid to the company. In the event, the last two bills were dishonoured, the German company alleging late

delivery and defective materials. The Bank, as holders for value, sought and obtained summary judgment on the bills, the court not being aware of the fact that the Bank had not paid the face value of the bills. On appeal, the Court of Appeal held that while there was no defence in law to the claim for the full amount of the bills, a stay of execution would be granted of the 27 per cent for which the Bank was trustee for its customers. Clearly, whilst the principle of law enunciated in the above case is that a defendant can raise any defence or set-off which he would have available against the person who was really behind the transaction, the facts of that case are distinguishable with the present one. Here, according to the affidavit evidence (enclosure 12) of Mr. Gay Thiam Whatt, the loan officer of the plaintiff Bank, the acceptance of the bill by the defendant was a clear unconditional acceptance which was unqualified in clear and unequivocal terms. Even the protest deed (exhibit 4) is clear that one Mr. Ong (a person in charge) had admitted he would pay up the said bill in two instalments. It appears that the defendant's managing director, Mr. Ong Tat Sam, in his affidavit (enclosure 11) had stated that the defendant was entitled to 3% commission of the total sales and services allowances from the drawer. On the basis of Mr. Gay's affidavit, I find the acceptance of the bill is general within section 19(1) of the Bills of Exchange Act 1949 (Act 204). For the above reasons, I am of the opinion that the *Barclays Bank Ltd.*[1] does not apply and in the event there is no triable issue raised by the defendant in the defence.

Lastly, Miss Neoh raised the question of rate of exchange. Under the particulars to paragraph 4 of the statement of claim, the exchange rate of Malaysian ringgit to the Singapore dollar was based on the prevailing rate as at September 2, 1986. According to counsel, this is defective because it does not comply with section 72(d) of the Bills of Exchange Act 1949. This sub-section provides that where the bill is drawn out of the Federation but payable in this country and the sum payable is not expressed in the currency of the Federation, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day on which the instalment is payable. It should be noted that section 72 applies to matters where a conflict of laws arises. According to a commentary in *Halsbury's Laws of England,* "these special provisions in the statute are more in the nature of practical expedients suited to the convenience of special cases than attempts to meet the difficulty of a conflict of laws." (4th Ed. Vol. 4, para. 489). Therefore, in the present case, the debt incurred by the defendant was payable in Singapore dollars amounting to S$26,855.92 and the plaintiff was entitled to recover the judgment debt even without converting it to the ringgit. Yet, the plaintiff did calculate the sum in the ringgit at the exchange rate as at September 2, 1986. The plaintiff must have done this for convenience. In my judgment, the section does not apply to a judgment debt and therefore the calculation of the exchange rate as at September 2, 1986 does not breach section 72(d) of the Act.

For the above reasons, this appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Presgrave & Matthews; Tan, Yu & Co.*

LEE KAM CHUN v. SYARIKAT KUKUH MAJU SDN. BHD. (SYARIKAT PERUMAHAN PEGAWAI KERAJAAN SDN. BHD., GARNISHEE)

[A.C.J. (Peh Swee Chin J.) December 11, 1987]

[Ipoh – Civil Suit No. 24-361-86]

Contract – Building contract – Retention sum held by employer – Whether judgment-creditor has right to this sum in garnishee proceedings – Principles applicable – Termination of building contract – Effect of.

The plaintiff (the judgment-creditor) had obtained judgment for a certain sum against the defendant (the judgment-debtor) for work done. The judgment-debtor was at all material times a contractor of his employer, the garnishee in the present proceedings. An order of garnishee to show cause, which was obtained *ex parte* by the judgment-creditor against the garnishee, was served on the garnishee. Due to certain breaches of the building contract, the garnishee terminated the contract between them and the defendant and had appointed another contractor to carry on the work.

The question in the present case was whether the retention money held in the hands of the employer (the garnishee) is attachable at the instance of a judgment-creditor or the judgment-debtor. The learned Registrar gave judgment for the judgment-creditor. The garnishee appealed.

The garnishee first contended that the retention money was not due and payable to the judgment-debtor